Supreme Court, U.S.
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No. 95-757

IN THE
Supreme Court of the United States
OCTOBER TERM, 1995

RONALD D. HARRIS,
Petitioner,
v.
AT&T COMMUNICATION, INC.
Respondent.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

RESPONDENT'S BRIEF IN OPPOSITION

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December 13, 1995

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STATEMENT REQUIRED BY RULE 29.1

1. Respondent AT&T Corp. owns an equity interest in the following publicly traded companies:

Compagnie Industriali Riunite, S.p.A. (Italy); and
AT&T Capital Corporation.

AT&T owns an equity interest in the following non-publicly traded companies, which have public debt outstanding:

AT&T Credit Corporation;
AT&T Global Information Solutions Company (formerly NCR Corporation); and
McCaw Cellular Communications, Inc.

TABLE OF AUTHORITIES

CASES

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RESPONDENT'S BRIEF IN OPPOSITION

This case does not raise the questions or the conflict the petition purports to present. Instead, in an unpublished per curiam decision, the Fifth Circuit simply affirmed a district court's routine application of well-settled legal principles to a unique set of facts.

1. Petitioner was employed by respondent in a sales position from 1981 to 1987. Pet. App. 3a. In 1988, he initiated the first of two employment discrimination suits against respondent (the "initial action"). In August 1991, petitioner obtained a judgment in the initial action that respondent had discriminated against him because of his race. The district court concluded, however, that petitioner should not be reinstated to a sales position with respondent, a judgment the Fifth Circuit affirmed. Pet. App. 4a.

In the lawsuit that gives rise to this petition, petitioner alleges that in October 1991, he saw a newspaper advertisement in which respondent sought applicants for a sales position. Pet. App. 3a. Although, just one month earlier, the district court in the initial action had held that petitioner should not be reinstated to a sales position with respondent, petitioner claims that he nevertheless applied for the position. Respondent never received an application from petitioner, however, and therefore never responded to his application. Pet. App. 9a-11a. Petitioner alleges that respondent's failure to hire him was the result of unlawful discrimination and retaliation.

Following discovery, the district court granted summary judgment in favor of respondent. Applying the standards announced in *McDonnell Douglas Corp.* v. *Green*, 411 U.S. 792 (1973), the court found that petitioner had made only one of the four showings necessary to a *prima facie* claim of discrimination—*i.e.*, that he belongs to a racial minority. Pet. App. 9a. With respect to the other elements of his *prima facie* case, the court found that, because petitioner could not rebut respondent's showing that it never received an application from him, petitioner could not show either that he had applied and was qualified for the position, or that he had been rejected. Pet. App. 10a. The court also found that, even if petitioner could have shown that he had been "rejected," he had completely failed to show that thereafter respondent continued to seek applicants with his qualifications. The court explained that petitioner "failed to provide a scintilla of evidence as to any other applicants considered" and indeed, had "not even *alleged* that such applicants exist." *Id.* (emphasis in original).

The district court likewise entered judgment for respondent on petitioner's retaliation claims. The court held that petitioner's failure to show that respondent received his application precluded a showing that he had suffered any "adverse employment action." Pet. App. 11a. In addition, the court found that petitioner had

"not presented any independent evidence that would enable a fact finder to conclude that [respondent's] refusal to hire him was impermissibly related to [petitioner's] prior complaints" of discrimination. Pet. App. 12a. The court noted that respondent had articulated a number of legitimate, nondiscriminatory reasons for not hiring petitioner. Pet. App. 11a.

As an alternative basis for its decision, the court held that petitioner's claims were barred by principles of collateral estoppel. The court held that, in essence, the issue petitioner sought to litigate was whether he should be reinstated to his prior position with respondent. Pet. App. 13a-14a. Because that issue had been fully and fairly litigated and finally determined in the initial action, petitioner was barred from relitigating it. Pet. App. 14a.

The Fifth Circuit affirmed without opinion, citing its rule that cases "that have no precedential value and merely decide particular cases on the basis of well-settled principles of law" do not warrant written dispositions. Pet. App. 1a.

2. The decisions below raise no issue worthy of this Court's attention. Contrary to petitioner's claims, the lower courts did not hold that, to make out a *prima facie* claim, a Title VII plaintiff must "show[] the identity of the other job applicants or that [the plaintiff] was *better* qualified" than other applicants. Pet. 5 (emphasis added). Rather, the district court simply required petitioner to show that "after his rejection, the position remained open and [respondent] continued to seek applica[tions] from persons *of* [*petitioner's*] qualifications." Pet. App. 9a (emphasis added) (citing *McDonnell Douglas*, 411 U.S. at 802). Petitioner unquestionably failed to make this required showing.

Nor did the courts below hold that a successful Title VII plaintiff may never seek future employment with a defendant employer when reinstatement is denied. First,

as petitioner himself acknowledges, the district court's principal and independently dispositive holding was "that Petitioner could not make a *prima facie* Title VII case for either unlawful retaliation or discrimination since . . . Petitioner did not present information regarding other applicants with [his] qualifications." Pet. 3. Plainly, a plaintiff who cannot establish that he applied or was as qualified as those considered for a position cannot claim that his failure to be hired was the result of unlawful animus. Because these findings by the district court are wholly dispositive, no broader questions concerning rights of reinstatement are even implicated by the case.

Second, even the district court's alternative holding does not announce any general rules concerning reinstatement. Rather, the district court made the altogether unremarkable factual determination that, because petitioner sought the same position he had previously held with respondent only one month after a different court had denied his request for reinstatement, his claims were "[i]n essence" the same as those he had previously litigated with respondent. Pet. App. 14a. This factual ruling, based on the unusual circumstances of this case, is correct, and does not raise any questions requiring this Court's review.

Finally, the rulings below do not conflict with the decisions of any other court. The only case petitioner cites, *Dhaliwal* v. *Woods Division, Hesston Corp.*, 930 F.2d 547 (7th Cir.), *cert. denied*, 502 U.S. 867 (1991), did not involve rights of reinstatement under Title VII, but rather the interpretation of a private contract. *Id.* at 547-48. The Seventh Circuit's contractual analysis, moreover, is completely consistent with the decisions below: the court recognized that a person who applies for a prior position shortly after settling a discrimination suit may be found to be "seeking reinstatement" and thus may be barred from doing so by a settlement agreement precluding such relief. *Id.*

CONCLUSION

For the foregoing reasons, the petition should be denied.

Respectfully submitted,

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